

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHERN-DIVISION

RECEIVED

KYM GRAY
PLAINTIFF

-V.S.-

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DEBRA P. HACKETT, CLK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

PAUL WHALEY
DEFENDANT

CASE NUMBER 2:06-CV-107-MEF

STATE OF ALABAMA
BIBB COUNTY

SWORN STATEMENT/AFFIDAVIT
OF
KYM GRAY

Before me _____, A Notary Public in
said County, in said State, Personally Appeared Kym Gray A.I.S.
NUMBER TO BE 203553, and Makes Oath that the Foregoing Statements are
True, and Correct to the Best of his Knowledge, and Kym Gray, has
Served upon the Office of Magistrate Judge Vanzetta Penn McPherson,
and all Parties to this Action A Copy thereof.

My Name is Kym Gray, and I'am currently an Inmate being
Confined in a Alabama State Penitentiary A.D.O.C. and Paul Whalkey,
the Defendant Herein is an State Employee of the State of Alabama
to-wit: Alabama Department of Corrections to-wit: Classification-
Division, and is Authorized by the State of Alabama to Exercise
State Authority to Perform Traditional State Functions Relative to
such Placement Programs Custodies Institutional Assignments and
Security Levels.

Paul Whaley, has Entered into the Files and/or Data of the A.D.O.C. False and Incorrect Informations of Plaintiff Kym Gray, whom has further Exhausted all of his Administrative Rededies to have saided Informations Removed from his A.D.O.C. FILES.

Defendant Whaley, has Introduced into the A.D.O.C. Rule/regulations an Policy that Governs the Classification-Division Concerning Certain Offender(s) and Certain Criminal Offense(s) that are Restricted from such Placement at a Lesser Restricted Institution to-wit: Work-Release Honor Camps such as Murders and Sex-related Offense.

Plaintiff Gray, does Argues that the Erronous Labling of this your Plaintiff as an Violent Criminal Predator, and a Violent Sexual Assault Occured Before the Offense of this Matter is not what Plaintiff Gay was Charged with, nor was Plaintiff Gray Convicted of Rape or any Sexual Assault in the Sentencing of this Cause before this Honorable Court, Defendant Whaley, has Asserted into the Files of the A.D.O.C. THYAT Plaintiff Gray was an Sex-Offender that saided Labling is Wrong and Very Incorrect. Plaintiff Gray states that Defendant Whaley is an Private Individual who is Acting under Color of State Law, and Plaintiff Gray does further Contends that defendant Whaley must be fairly Chararterized as a State Actor See: Davis V. Kennie 264, F.3d 86, 115-17 (1st Cir. 2001).

SEE: SMITH V. WADE, 461 U.S. 30 57 (1983)

PARRATT V. Taylor, 451 U.S. 527-535 (1981)

West V. Atkins, 487 U.S. 42 54-55 (1988).

Plaintiff Gray, states that saided Actions of Defendant Whaley are Reckless and Callous Disregard for Plaintiff's Gray Rights as well as the Intentional Violations of Federal Law.

Plaintiff Gray, say(s) that the Civil Rights Act of 1871 as Amended Allows (Gray) to Seek Redress to have the False and Erronous information Removed from his Files.

Seeking Prospective Relief against State Official Plaintiff Gray, say(s) that Defendant Whaley is Liable for directing the Employees of the A.D.O.C. to Commit the Violations of using False and Erroneous Information in Classfying Plaintiff gray Defendant Whaley actions are Arbituary, and Capricious as Adminsitered unto Plaintiff gray with such Maliciously and in Bad faith.

Defendant Whaley has Misused his Poer of Office by Virtue of State Law and made Possible only because Defendant Whaley is Clothed with the Authority of State Law, and the Individual Actions of Defendant Whaley was under the Color of State Law Citing:

U.S. V. Classic, 313 U.S. 299-328 SEE: KELLY V. CURTIS, 21 F.3d 1544-1547 (11th Cir. 1994). Plaintiff Gray, states that defendant Whaley, has Intentionally Inflected Mental and Emotional Injury which has further placed Atypical and Significant Hardship on this the Plaintiff Gray, Citing Harris V. Angelina County 31 F. 3d 331 337-38 (5th Cir. 1994). See: Libel and Slander 7 (1).

See: Defamation and Slander 6 (1).

Plaintiff Gray, states that the Actions of defendant Whaley was "Outrageous in his Character as A Professional saided Defamations and Slander Statement of Defendant Whaley goes Beyond all Possible Boundaries of Decency.

Plaintiff Gray, does Contends that Defendant Whaley has not proved that (Gray) Sexually Assaulted the Victim in the State's Case-in-Chief before the Lowndes Circuit Court in which Plaintiff Gray entered into a Best plea Interest of this Case.

Plaintiff Gray, states that it is Critical that the Moral Force of the Crijminal Law not be Diluted by a Standard of Proof that Leaves Peoples in Doubt Whether Innocent Men (Gray) is by Defendant Whaley Statements in his Affidavits of being an Sexual Predator of Violent Predatory, saided Statements was Tended to Injure Gray's Esteem and GoodWill.

SEE: LICAR V. EDMONDSON OIL CO., 457 U.S. 922, 937 (1982), IN which the Supreme Court of the United States has Established a Two-Part Test for Determining whether a Private Individual has Acted under Color of State Law See: Attached Exhibits #A).

Plaintiff Gray states that this Court has Ordered (Gray) to Submit in his Affidavit all Defense and Applicable Administrative Rules and Regulations or Guidelines of the A.D.O.C., Plaintiff Gray does Respectfully Request that this Court Issue It's Order to the Defendant Whaley; Directing saided SUBPOENA DUCES TECUM INSPECTION OF THE A.D.O.C. MANUEL FILES/RECORDS CONCERNING THIS INSTANT PROCEEDINGS AND Plaintiff Gray does Relies on the Authority of Title 12021-6 of the Code of Alabama 1975 in Support of his Request and Claims as Prima Facie Proof of the Facts Contained therein of (Gray's) Civil-Complaint for such Libel, Slander, and Defamation of Plaintiff Gray in the Denial of (Gray's) Lesser-restricted Institutional Placement and Expungement of the Erronous Information and/or Data of this your Plaintiff being a Sex Offender and/or Restricted as Defendant Whaley has Asserted in his Previous Sworn Affidavit/Statements.

Plaintiff Gray, states that Defendant Whaley does not have Absolute and Qualified Immunity from this Suit, and actions before this Court, Defendant Whaley was Acting Pursuant to an Official Policy of the State of Alabama to-wit: Department of Corrections See; HAFER V. MELO 502, U.S. 25-29 (1991) which Provides in Part:

Individual Capacity Suit against State Official upheld even when Official's Action Cloaked with State Authority could not have been Effected if Acting only in Personal Capacity.

Plaintiff Gray, states that the Critical Issues in this Suit against Defendant Whaley, a State Official in his Own Individual Capacity is Whether Prospective or retroactive Relief is Sought, and Plaintiff Gray is Seeking Prospective Injunctive Relief in which saided Suit is not Against the State of Alabama See: Missouri V. Jenkins, 491 U.S. 274 280 (1989) Hason V. Med. Bd., 279 F.3d 1167-1171 (9th Cir. 2002) Cert. Granted 123 S.CT 561 (2002).

PRAYER FOR RELIEF

1. That this Honorable Court and Respective judge Vanzetta Penn McPherson will Enter It's Order to Supena the Records of the Defendnats Pertaining to Plaintiff Gray's Classification for this Court's Inspection and Examination of the Charged Offense in which Plaintiff Gray was Convicted and Subsequently Sentence to for Murder.
2. That this Honorable Court will not Grant the Defendant Paul Whaley Absolute and Qualified Immunity from this Suit.
3. That this Honorable Court will Grant any other and different relief to which Plaintiff Gray Might otherwise be Entitled.

CONCLUSION

WHEREFORE PREMISE TO BE CONSIDERED, PLAINTIFF GRAY, DOES ARDENTLY PRAYS THAT THIS HONORABLE COURT WILL GRANT RELIEF IN THE FORM OF THIS COURT SETTING THIS MATTER FOR AN HEARING ON THE UNDISPUTED ISSUES CONTAINED THEREIN OF PLAINTIFF GRAY CIVIL ACTIONS.

CERTIFICATE OF SERVICE
VERIFICATION

THIS DOES HEREBY CERTIFY'S THAT KYM GRAY HAS SERVED UPON THE OFFICE OF THE CLERK DEBRA P. HACKETT UNITED STATES DISTRICT COURT, AND UPON ALL PARTIES INVOLVED IN THIS ACTION A COPY OF FOREGOING PLEADINGS BY PLACING SAME IN THE UNITED STATES POSTAL-MAIL THIS 1st Day of June 2006.

CC: PAUL WHALEY---DIRECTOR
ALABAMA DEPARTMENT OF CORRECTIONS
CLASSIFICATION-DIVISION
#301 S. Ripley Street
Montgomery, Alabama 36130

Sworn to and Subscribed Before me this

____ Day of _____, 2006.

NOTARY PUBLIC: _____
MY COMMISSION EXPIRES: _____

RESPECTFULLY SUBMITTED


Kym Gray
KYM GRAY

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHERN-DIVISION

CERTIFICATE OF SERVICE
VERIFICATION

I, KYM GRAY, DOES SWEAR UNDER THE PENALTY OF PERJURY THAT THERE WAS NO NOTARY PUBLIC AVAILBLE AT THE INSTITUTION ON THE DAY OF MAILING OF THIS AFFIDAVIT/STATEMENT. BELOW ARE SIGNATURES OF INMATES WHO ATTEST UNTO THE FACT THAT I, MAILED THIS AFFIDAVIT STATEMENT ON THE 2nd, DAY OF JUNE, 2006.

NAME:

A.I.S.

- | | |
|---------------------------|---------------|
| 1. <u>Freddie Jackson</u> | <u>124417</u> |
| 2. <u>David Thomas</u> | <u>193796</u> |
| 3. <u>Robert Jarver</u> | <u>113144</u> |

RESPECTFULLY SUBMITTED

Kym Gray
KYM GRAY
A.I.S. 203553
BIBB CORRECTIONAL FACILITY
565-BIBB LANE
BRENT, ALABAMA 35034

CC: PERSONAL FILES